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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 6004
DATE COMPLAINT FILED: 4/30/2008
DATE OF NOTIFICATION: 5/7/2008
LAST RESPONSE RECEIVED: 5/30/2008
DATE ACTIVATED: 6/24/2008
EXPIRATION OF SOL: 11/27/2012

COMPLAINANT:

Michigan Republican Party

RESPONDENTS:

Andrew Concannon
Friends of Andrew Concannon
"Friends of Andrew Concannon aka [sic]
Concannon for Congress" (Fk/a Concannon for
Congress) and Raymond Mashni, in his official
capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 432(e)
2 U.S.C. § 433
2 U.S.C. § 434(b)
2 U.S.C. § 441a
2 U.S.C. § 441d
2 U.S.C. § 441i(e)
11 C.F.R. § 101.1
11 C.F.R. § 102.14
11 C.F.R. § 104.3
11 C.F.R. § 110.11
11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

Disclosure reports; Commission indices

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

I. INTRODUCTION

The complaint in this matter contains three general allegations. The first is that Friends
of Andrew Concannon ("FAC"), a Section 527 organization, violated the Federal Election

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1 Campaign Act of 1971, as amended, ("the Act") by receiving contributions and making
2 expenditures in connection with a Federal election without registering and reporting as a political
3 committee. The available information, as discussed below, suggests that FAC and Concannon
4 for Congress ("CFC"), Andrew Concannon's principal campaign committee, are actually the
5 same entity and that FAC is not a separate political committee. Therefore, we recommend that
6 the Commission find no reason to believe that Friends of Andrew Concannon violated
7 2 U.S.C. §§ 433 and 434 by failing to register and report as a political committee.

8 The second allegation is that FAC may be raising funds from prohibited sources or
9 accepting excessive contributions, and that Andrew Concannon, the candidate, is raising funds
10 for FAC in violation of 2 U.S.C. § 441i and 11 C.F.R. § 300.61 (funds not subject to the
11 limitations, prohibitions, and reporting requirements of the Act). As discussed below, the
12 available information indicates that FAC was Andrew Concannon's exploratory committee
13 during the period he was deciding whether to run for Congress and engaged in permissible
14 exploratory activities. There is no evidence to suggest that FAC took contributions from
15 prohibited sources or in excess of the legal limits or that Mr. Concannon raised prohibited and/or
16 excessive funds for FAC. Therefore, we recommend the Commission find no reason to believe
17 that Friends of Andrew Concannon violated 2 U.S.C. §§ 441a, 441b, 441c and 441e in
18 connection with these activities. We also recommend, therefore, that the Commission find no
19 reason to believe that Andrew Concannon violated 2 U.S.C. § 441i and 11 C.F.R. § 300.61 in
20 connection with these activities.

21 The third allegation is that CFC may have failed to properly disclose all disbursements in
22 connection with a St. Patrick's Day event and may have received prohibited in-kind
23 contributions from FAC in connection with this event. Based on Respondents' response to the

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1 complaint and disclosure reports, it appears that Respondents properly disclosed all contributions
2 and expenditures associated with this event, except for a \$350 in-kind contribution from "Dave's
3 Sign Rental." Therefore, it appears that "Friends of Andrew Concannon aka [sic] Concannon for
4 Congress" and Raymond Mashni, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

5 Because it appears that FAC became CFC and the two are actually one in the same committee,
6 there is no basis to conclude that FAC may have made prohibited in-kind contributions to CFC.

7 Finally, while not specifically alleged in the complaint, the facts set forth in the complaint
8 suggest that Respondents violated the Act by improperly listing FAC on CFC's disclosure forms
9 and campaign communications. As discussed further below, the available information indicates
10 that after Mr. Concannon became a Federal candidate, he registered his principal campaign
11 committee under the name "Concannon for Congress" but used the name "Friends of Andrew
12 Concannon," the name of the Section 527 organization that engaged in exploratory activities, as
13 if it were an authorized committee of CFC. It appears that the committee might be using the
14 FAC and CFC names interchangeably.¹

15 Therefore, it appears that "Friends of Andrew Concannon aka [sic] Concannon for
16 Congress" and Raymond Mashni, in his official capacity as treasurer, violated 2 U.S.C. § 433 by
17 amending their Statement of Organization to correct the improper listing of FAC as an
18 authorized/affiliated committee of CFC more than 10 days after filing the original Statement of
19 Organization and violated 2 U.S.C. § 441d by improperly stating in disclaimers found on
20 committee communications that FAC paid for the communications.

¹ The committee's most recent disclosure report, the 2008 Pre-Primary Report, filed on July 24, 2008, and covering the period April 1, 2008 through July 16, 2008, lists "Concannon for Congress" as the committee name, approximately two months after the committee changed its name on its Statement of Organization to "Friends of Andrew Concannon aka [sic] Concannon for Congress."

1 Because two of the violations appear to have arisen from a single misunderstanding as to
2 the reporting and naming requirements for the Committee and the failure to report the in-kind
3 contribution appears to have been a single instance and was of a *de minimis* amount, we
4 recommend that the Commission exercise its prosecutorial discretion to dismiss the matter as it
5 pertains to the Committee's violations of 2 U.S.C. §§ 433, 434(b), and 441d, issue an
6 admonishment, and close the file. See *Hecsher v. Conway*, 270 U.S. 821 (1985).

7 **II. FACTUAL AND LEGAL ANALYSIS**

8
9 **A. Alleged Failure to Register FAC as a Political Committee and File FEC**
10 **Disclosure Reports**

11
12 The complaint alleges that FAC, a Section 527 entity not registered with the FEC,
13 received contributions and made expenditures in connection with a Federal election without
14 registering and reporting as a political committee.

15 In support of its allegations, the complaint provides a copy of Internal Revenue Service
16 Form 8871 ("Political Organization Notice of Section 527 Status"), which shows that Mr.
17 Concannon established an entity called "Friends of Andrew Concannon" in late November 2007,
18 and filed the Notice of Status with the IRS on January 22, 2008.² Complaint at Exhibit 1. The
19 complaint states that FAC is not registered as a political committee with the FEC or with any
20 other election authority, but points out that the Notice of Section 527 Status contains the
21 following statement of purpose:

22 "Campaign and fundraising committee/association organized for accepting
23 donations and making expenditures for the purpose of electing Andrew
24 Concannon to public office – an exempt function under law."
25

26 *Id.* at 1.

² The Form 8871 that FAC filed with the IRS to register as a Section 527 organization indicates that FAC was established on November 29, 2007. However, the Form 8871 was not actually signed by Andrew Concannon until January 22, 2008. We do not know why the Form 8871 was not signed until January 22nd.

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1 In reply, Respondents assert that they did not violate the Act and the Commission's
2 regulations, explaining that FAC was the precursor organization to CFC and was formed during
3 the exploratory phase to determine whether Mr. Concannon's candidacy was viable.
4 Respondents further assert that Mr. Concannon filed the Notice of Section 527 Status so that
5 FAC would be tax-exempt during the exploratory period. Respondents assert that FAC only
6 raised and spent permissible funds during the exploratory period, which were properly disclosed
7 in CFC's first disclosure report, the 2008 April Quarterly Report.³

8 Under the Act, an individual becomes a candidate for Federal office (and thus triggers
9 registration and reporting obligations under the Act) when his or her campaign either receives
10 \$5,000 in contributions or makes \$5,000 in expenditures. 2 U.S.C. § 431(2). There is, however,
11 a limited exception for amounts raised and spent while an individual is "testing the waters" in
12 order to decide whether to become a candidate. In such cases, the Commission's regulations
13 provide that the terms "contribution" and "expenditure" do not include funds received or
14 payments made solely to determine whether an individual should become a candidate. 11 C.F.R.
15 §§ 100.72(a) and 100.131(a). Thus, before making a final decision as to whether to become a
16 candidate, an individual may raise or spend more than \$5,000 without triggering candidate status
17 if his or her activities are permissible "testing the waters" activities, which include, but are not
18 limited to, conducting polls, making telephone calls, and travel. *Id.* Only funds permissible
19 under the Act may be used for such activities. *Id.*

20 However, when an individual raises or spends more than \$5,000 and engages in activities
21 indicating that he or she has decided to run for a particular office, or activities relevant to

³ After its registration as a principal campaign committee, CFC filed its first disclosure report, the 2008 April Quarterly Report. The report disclosed receipts totaling \$27,866.70 and disbursements totaling \$11,643.14, including itemized receipts of \$3,447.64 and disbursements of \$1,773.64 during the exploratory period.

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1 conducting a campaign, the individual is deemed to have crossed the line from "testing the
2 waters" to "candidate" status under the Act. These activities include, but are not limited to:
3 using general public political advertising to publicize the individual's intention to campaign for
4 Federal office; raising funds in excess of what could reasonably be expected to be used for
5 exploratory activities or activities designed to amass funds to be spent after becoming a
6 candidate; making or authorizing written or oral statements that refer to the individual as a
7 candidate for a particular office; or conducting activities in close proximity to the election or
8 over a protracted period of time. 11 C.F.R. §§ 100.72(b) and 100.131(b).

9 Based on the information provided by Respondents and in disclosure reports, it appears
10 that Concannon established FAC as his "exploratory committee" while testing the waters to
11 determine the viability of his candidacy. First, the name "Friends of Andrew Concannon" does
12 not refer to Concannon as a candidate for a particular office. Second, the statement of purpose
13 on the Section 527 application is ambiguous regarding whether Concannon had in fact made a
14 decision to run for Federal office. In any event, even if the statement could be construed as a
15 statement of his intent to run for office, the amount of money raised or spent by Mr. Concannon
16 during the exploratory phase was below the \$5,000 threshold for triggering candidate status. See
17 n.3, *supra*.

18 Therefore, we recommend that the Commission find no reason to believe that Friends of
19 Andrew Concannon violated 2 U.S.C. §§ 433 and 434 by failing to register and report as a
20 political committee.

21 **B. Alleged Impermissible Fundraising By Andrew Concannon for FAC and**
22 **Fundraising By FAC**
23

24 According to the complaint, Andrew Concannon, a candidate for the U.S. House of
25 Representatives for Michigan's 4th Congressional District, raised funds for FAC in amounts and

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1 from sources prohibited under the Act. Complaint at 2-3. The complaint also alleges that FAC
2 may have raised funds on its own that do not meet the requirements of the Act.

3 The Act, as amended, prohibits Federal candidates and officeholders, any "agent of a
4 candidate or an individual holding Federal office," or any entity established, financed,
5 maintained or controlled by a Federal candidate from soliciting, receiving, directing, transferring
6 or spending funds in connection with an election for Federal office, including funds for Federal
7 election activity, or in connection with any election other than an election for Federal office,
8 unless the funds are subject to the limitations, prohibitions and reporting requirements of the Act.
9 2 U.S.C. § 441i(e)(1). The available information indicates that FAC and Mr. Concannon raised
10 funds for Mr. Concannon's Federal campaign within the limits of the Act. Respondents state
11 that all of the funds raised by and for FAC were disclosed by CFC in its first disclosure report.
12 Response at 2. We have no information to suggest otherwise, and the contributions disclosed in
13 CFC's 2008 April Quarterly Report appear to be within applicable limits and from permissible
14 sources. Therefore, we recommend the Commission find no reason to believe that Andrew
15 Concannon violated 2 U.S.C. § 441i(e) and 11 C.F.R. § 300.61 in connection with these
16 activities. For the same reasons, we recommend that the Commission find no reason to believe
17 that FAC violated 2 U.S.C. §§ 441a, 441b, 441c, and 441e in connection with these activities.

18 **C. Alleged Nondisclosure of In-kind Contributions and Expenditures for St.**
19 **Patrick's Day Event**
20

21 The complaint alleges that the amount CFC disclosed for parade supplies (\$224.87) on its
22 2008 April Quarterly Report must be far less than what it actually spent, and that FAC, the
23 unregistered committee, must have paid for the supplies as prohibited in-kind contributions. In
24 their response, Respondents stated that they reported all expenses for the event and provided
25 invoices for the expenses, which total \$626.87: T-shirts (\$162.18); printing of signs and banners

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1 (\$402.00); and candy (\$62.69). All of these expenses were reported on CFC's 2008 April
2 Quarterly Report. See Response at Exhibits A-C. Because, as further discussed below (Section
3 D), it appears that FAC became CFC and the two are actually one in the same committee, it does
4 not appear that CFC accepted prohibited in-kind contributions from FAC.

5 Respondents also indicate that two digital signs bearing Mr. Concannon's image were on
6 display at the St. Patrick's Day event. *Id.* at 2. Respondents assert that the digital signs were
7 provided by two individuals (owners of the sign business called "Dave's Sign Rental") "as a
8 voluntary expression of support" and that these individuals "did not intend to make a donation."
9 Respondents note that they determined the cost of the sign usage and accessories to be \$350 and
10 that if the Commission considers these signs to be an in-kind contribution, they will amend their
11 April Quarterly Report to disclose the contribution. Respondents further note that any such
12 contribution from Dave's Sign Rental would be permissible because Dave's Sign Rental is not
13 organized as a corporation. A Dun and Bradstreet search does not reveal any information that
14 would indicate that Dave's Sign Rental is incorporated. Therefore, any contribution from Dave's
15 Sign Rental to CFC would be permissible within the Act's contribution limits, but would need to
16 be disclosed by the committee in accordance with 2 U.S.C. § 434(b).

17 Respondents note that a truck and trailer were used to haul and position the signs, but did
18 not specifically state that Dave's Sign Rental paid for or provided the truck and trailer. A photo
19 of the truck and trailer provided with the complaint shows what appear to be the campaign's own
20 signs on the truck attached to the trailer with the digital signs provided by Dave's Sign Rental.
21 See Complaint at Exhibit 6. Thus, it appears that the campaign itself may have provided the
22 truck and trailer to haul the digital signs provided by Dave's Sign Rental, which would indicate

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1 knowledge by the campaign that the digital signs were going to be provided and participation in
2 the set-up of the signs with Dave's Sign Rental.

3 A contribution is anything of value given, loaned or advanced to influence a federal
4 election. See 2 U.S.C. § 431(8)(A)(i); see also 11 C.F.R. § 100.52(a). Commission regulations
5 define "anything of value" to include "the provision of any goods or services without charge or
6 at a charge that is less than the usual and normal charge for such goods or services." 11 C.F.R.
7 § 100.52(d)(1). Thus, the donation of the digital signs without charge appears to constitute an in-
8 kind contribution from Dave's Sign Rental to Respondents. An in-kind contribution is treated as
9 both a "contribution" to and an "expenditure" by the political committee receiving the in-kind
10 contribution. 11 C.F.R. §§ 100.111(e); 104.13(a)(2). An authorized committee of a candidate must
11 report and itemize all contributions received from individuals that aggregate in excess of \$200 per
12 election cycle. 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(a)(4). An in-kind contribution must also be
13 reported as an expenditure on the same report. 11 C.F.R. §§ 104.3(b) and 104.13(a)(2). As such,
14 \$350.00 should have been disclosed as both a contribution to and an expenditure by Respondents
15 in their 2008 April Quarterly Report.

16 Based on Respondents' response to the complaint and disclosure reports, it appears that
17 Respondents properly disclosed all contributions and expenditures associated with the St.
18 Patrick's Day event, except for the in-kind contribution from Dave's Sign Rental. Thus, it
19 appears that Respondents violated 2 U.S.C. § 434(b) by failing to disclose an in-kind
20 contribution. Because the failure to disclose the in-kind contribution was *de minimis*, we
21 recommend that the Commission dismiss with admonishment.

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D. Apparent Failure of Respondents to Properly Register the Name of the Principal Campaign Committee and Include the Appropriate Disclaimer on Communications

The complaint states that the Concannon's campaign Statement of Organization identifies FAC as an "affiliated committee" of CFC, even though FAC is not registered with the FEC, and that various Concannon campaign communications and correspondence contain a statement that FAC paid for the communication. The complaint provides the following documents: (1) a copy of a campaign brochure produced by the Concannon campaign with the statement: "Paid for by Friends of Andrew Concannon"; (2) a page from the official website for Concannon for Congress which states "Powered by Friends of Andrew Concannon"; and, (3) copy of an April 2, 2008, letter from Concannon for Congress to the FEC on stationery containing the statement: "Paid for by Friends of Andrew Concannon." Complaint at Exhibits 1-5.

Achieving "candidate" status triggers registration and reporting requirements for the candidate and for his principal campaign committee. Within 15 days of becoming a candidate, the individual must file a Statement of Candidacy with the Commission that designates the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization no later than ten days after it has been designated by the candidate. 2 U.S.C. § 433(a).

The candidate may designate the exploratory committee as the principal campaign committee and change the name of the committee as appropriate. The candidate may also designate additional political committees to serve as authorized committees of the candidate that may accept contributions or make expenditures on behalf of the candidate by filing a designation with the principal campaign committee. *See* 2 U.S.C. § 432(e)(1); 11 C.F.R. §§ 101.1(b) and 102.13(a)(1). However, within 10 days after being designated by the candidate, the authorized

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1 committee must file its own registration statement (FEC Form 1, Statement of Organization) and
2 disclosure reports. See 2 U.S.C. §§ 433 and 434(b); 11 C.F.R. §§ 102.1(b) and 102.13(a)(1).
3 Any amendment to the Statement of Organization must be filed within 10 days of the date of the
4 change or correction. *Id.*

5 On January 23, 2008, Mr. Concannon filed his Statement of Candidacy designating
6 "Concannon for Congress" as the principal campaign committee and "Friends of Andrew
7 Concannon" as an "authorized committee." On January 28, 2008, the treasurer for CFC filed a
8 Statement of Organization (FEC Form 1) registering CFC as the principal campaign committee
9 and identifying FAC as an "affiliated committee." After receiving notice of the complaint, CFC
10 filed an amended Statement of Organization on June 2, 2008, deleting the identification of FAC
11 as an "affiliated committee" and changing the name of the principal campaign committee to
12 "Friends of Andrew Concannon aka [sic] Concannon for Congress."

13 In their response, Respondents clarify that FAC was a "precursor committee" to CFC and
14 that it was identified on CFC's Statement of Organization to disclose its existence and to register
15 FAC under the name CFC. Response at 2. Respondents further state that FAC and CFC "are
16 one in the same committee." *Id.* The response did not explain why the campaign has identified
17 FAC as the entity financing the campaign's communications.

18 As already explained, Mr. Concannon apparently designated FAC as an "authorized
19 committee" on his Statement of Candidacy and as an "affiliated committee" on CFC's Statement
20 of Organization merely to disclose the existence of FAC as the precursor organization to CFC
21 and to register FAC under the name CFC.⁴ However, as a designated "authorized committee,"
22 FAC never filed a Statement of Organization as required under the Act and regulations and did

⁴ All authorized committees of the same candidate for the same election to Federal office are affiliated. 11 C.F.R. § 100.5(g)(1).

1 not file any disclosure reports. It also appears that Respondents erroneously identified FAC as
2 an affiliated committee on the Statement of Organization. When Respondents later amended
3 their Statement Organization to change the committee name to "Friends of Andrew Concannon
4 aka [sic] Concannon for Congress," they deleted the reference to FAC as an affiliated committee.
5 However, the amendment deleting the reference to FAC as an affiliated committee was filed
6 more than 4 months after the original Statement of Organization, in violation of 2 U.S.C. § 433.

7 It also appears that Respondents erroneously listed FAC on campaign communications as
8 the entity paying for the communications. The response does not address why Respondents did
9 so, but the available information, including Respondents' use of two names on its amended
10 Statement of Organization and its continued use of both names on campaign communications,
11 suggests that Respondents believe that the Committee may use more than one official name.

12 A campaign that authorizes and finances any communication must include a disclaimer
13 notice, which states that the communication was paid for by the authorized committee.

14 2 U.S.C. § 441d(a). Communications requiring a disclaimer include those made through any
15 broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility;
16 mass mailing (more than 500 substantially similar mailings within 30 days), telephone bank
17 (more than 500 substantially similar calls within 30 days), or any other form of general public
18 political advertising. 11 C.F.R. §§ 100.26, 100.27, 100.28. Electronic mail of more than 500
19 substantially similar communications when sent by a political committee, and all Internet
20 websites of political committees available to the general public must also include disclaimers.
21 11 C.F.R. § 110.11.

22 The CFC identified FAC as the entity paying for the communication in disclaimers on at
23 least one campaign brochure, a letter sent to the FEC on campaign stationery, and on its official

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1 campaign website. Complaint at Exhibits 1-5. We do not have information on how the
2 campaign brochure was disseminated or how the campaign stationery was used, but the available
3 information suggests that CFC may have used the same disclaimer on all of its campaign
4 communications. Because FAC was not a registered authorized committee of CFC, CFC's use
5 of FAC in its disclaimers on a CFC campaign brochure, on the campaign's official website, and
6 on campaign stationery, as if it were an authorized committee would appear to be a violation of
7 2 U.S.C. § 441d.

8 The amended Statement of Organization also changed the name of the principal
9 campaign committee from one name, Concannon for Congress, to a combination of two names,
10 "Friends of Andrew Concannon aka [sic] Concannon for Congress," and the committee appears
11 to be using the CFC and FAC names interchangeably. However, the use of more than one
12 official name for the principal campaign committee does not appear to be authorized by the Act
13 or the Commission's regulations, which only contemplate one principal campaign committee.
14 See 2 U.S.C. § 432(e)(1) and (4); 11 C.F.R. §§ 101.1 and 102.14(a).

15 Based on the above, it appears that "Friends of Andrew Concannon aka [sic] Concannon
16 for Congress" and Raymond Mashni, in his official capacity as treasurer, violated 2 U.S.C.
17 § 433, by untruthfully amending its Statement of Organization to delete FAC as an "affiliated
18 committee" of CFC, and 2 U.S.C. § 441d, by identifying FAC, an entity not registered as an
19 authorized committee, on its campaign communications as the entity paying for the
20 communications.

21 These violations appear to have arisen from a misunderstanding as to the reporting and
22 naming requirements of the Act. We have no information to suggest that the communications
23 containing the improper disclaimers, other than the website, were widely distributed or that the

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1 campaign's use of two names caused widespread confusion. Therefore, in the interest of
2 conserving Commission resources, we recommend that the Commission exercise its
3 prosecutorial discretion to dismiss the matter in connection with these violations, issue an
4 admonishment, and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985). We will advise
5 the Committee to properly amend its Statement of Organization to disclose only one name for
6 the Committee and to use only that name in all communications paid for by the Committee that
7 require a disclaimer as the organization paying for the communications.

8 **V. RECOMMENDATIONS**

- 9
10 1. Find no reason to believe that Friends of Andrew Concannon violated 2 U.S.C.
11 §§ 433, 434, 441a, 441b, 441c and 441e;
12
13 2. Find no reason to believe that Andrew Concannon violated 2 U.S.C. § 441i(e) and
14 11 C.F.R. § 300.61;
15
16 3. Dismiss as a matter of prosecutorial discretion and issue an admonishment to
17 "Friends of Andrew Concannon aka [sic] Concannon for Congress" and Raymond N.
18 Mashni, in his official capacity as treasurer, in connection with violations of
19 2 U.S.C. §§ 433, 434(b), and 441d;
20
21 4. Approve the attached Factual and Legal Analysis;
22
23 5. Approve the appropriate letters; and,

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6. Close the file.

Thomasenia P. Duncan
General Counsel

9/22/08
Date

BY:


Ann Marie Terzaken
Associate General Counsel for Enforcement


Audra L. Wassom
Acting Assistant General Counsel


Dominique Dillenseger
Attorney

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